



PAUL D. FRAM, CHAIRMAN • BRUCE C. GOODSON, VICE CHAIRMAN • JAMES O. McREYNOLDS, TREASURER
ARTHUR L. COLLINS, EXECUTIVE DIRECTOR/SECRETARY

CHESAPEAKE

Rebecca C.W. Adams, *Council Member*
Amar Dwarkanath, *Deputy City Manager*
Clifton E. Hayes, *Council Member*
William E. Harrell, *City Manager*
Ella P. Ward, *Council Member*

FRANKLIN

Joseph J. Scislowicz, *Council Member*
Rowland L. Taylor, *City Manager*

GLOUCESTER COUNTY

John J. Adams, Sr., *Board Member*
Williams H. Whitley, *County Administrator*

HAMPTON

Randall A. Gilliland, *Vice Mayor*
Ross A. Kearney, II, *Mayor*
Jesse T. Wallace, Jr., *City Manager*

ISLE OF WIGHT COUNTY

W. Douglas Caskey, *County Administrator*
Stan D. Clark, *Vice Chairman*

JAMES CITY COUNTY

Bruce C. Goodson, *Chairman*
Sanford B. Wanner, *County Administrator*

NEWPORT NEWS

Charles C. Allen, *Vice Mayor*
Joe S. Frank, *Mayor*
Randy W. Hildebrandt, *City Manager*

NORFOLK

Anthony L. Burfoot, *Vice Mayor*
Paul D. Fram, *Mayor*
Dr. Theresa W. Whibley, *Council Member*
Regina V.K. Williams, *City Manager*
Barclay C. Winn, *Council Member*

POQUOSON

Charles W. Burgess, Jr., *City Manager*
Gordon C. Helsel, Jr., *Mayor*

PORTSMOUTH

Kenneth L. Chandler, *City Manager*
Douglas L. Smith, *Council Member*

SOUTHAMPTON COUNTY

Anita T. Felts, *Board Member*
Michael W. Johnson, *County Administrator*

SUFFOLK

Linda T. Johnson, *Mayor*
James G. Vacalis, *City Manager*

SURRY COUNTY

Tyrone W. Franklin, *County Administrator*
Judy S. Lyttle, *Board Member*

VIRGINIA BEACH

Harry E. Diezel, *Council Member*
Robert M. Dyer, *Council Member*
Barbara M. Henley, *Council Member*
Louis R. Jones, *Vice Mayor*
Meyera E. Oberndorf, *Mayor*
James K. Spore, *City Manager*
John E. Uhrin, *Council Member*

WILLIAMSBURG

Jackson C. Tuttle, II, *City Manager*
Jeanne Zeidler, *Mayor*

YORK COUNTY

James O. McReynolds, *County Administrator*
Thomas G. Shepperd, Jr., *Board Member*

September 19, 2007

Mr. Joe Maroon, Director
Department of Conservation and Recreation
203 Governor Street
Richmond, Virginia 23219

RE: Stormwater Regulations (POW:STORMWATER)

Dear Mr. Maroon:

This letter is in response to the Agenda for the Soil and Water Conservation Board Meeting on September 20-21, 2007, which includes items on both days involving amendments to the State Stormwater Management Regulations, 4 VAC 50-60. These address Parts I, II, III, and XIII (hereinafter, the VSMP Regulations) and the Phase II MS4 Program (hereinafter, the Phase II Regulations). We request that you include these comments in the record of the Board meeting.

On behalf of the members of the Regional Stormwater Management Committee of the Hampton Roads Planning District Commission, I want to recognize the substantial effort undertaken by the staff of the Department of Conservation and Recreation in developing these regulatory amendments. We appreciate your efforts to include representatives of the regulated community – local governments – in this endeavor, which has significant implications for the quality of our environment and the daily operations of our local governments.

However, the staff of the HRPDC and the members of the HRPDC Regional Stormwater Management Committee are concerned about the impact of these regulatory changes on the affected local governments and about a number of issues that, we believe, require additional consideration prior to adoption by the Board of the final regulations. The following highlights some of the areas that require additional consideration. It is not an exhaustive list because of the limited amount of time afforded for review between publication of the final drafts and the Board's consideration.

Issues of concern include:

Definitions. There are inconsistencies between the definitions included in the VSMP Regulations and the Phase II Regulations. As one example, “adequate channel” is defined differently in the two regulations.

Technical Criteria. Much of the information included in Tabular Form in the VSMP Regulations, such as LID Credits and the technical performance criteria, appears to be more appropriate in guidance. This would facilitate future modifications of the criteria as the state of our knowledge about stormwater controls continues to increase. Also, these technical criteria are closely linked to the Virginia Stormwater Management Handbook, which is presently in the process of being updated, and to the BMP Clearinghouse, which is in the early stages of development. The Committee is concerned that the criteria are being incorporated in regulations and that the regulated community will not have benefit of the evolving technical support for these criteria.

Timing of Phase II Regulations. The Phase II localities have operated under MS4 Permits for the past four and one-half years. These permits required the development of stormwater management programs. The requirements of the proposed Phase II Regulations, including the rigorous TMDL – Impairment Control Plan component, represent a substantial ramping up of program requirements. It is not clear that the Regulations provide for a similar program development period to ensure that Phase II localities have adequate time to address the new requirements.

The fact that the Phase II Regulations are proceeding on an expedited path, without full benefit of the normal economic impact analysis associated with the Administrative Process Act procedures, heightens the concern of the affected localities. We recognize that the existing regulations expire in December and that in the absence of regulations, both the permitted localities and the state could be seen as in violation of the federal Clean Water Act and regulations. If it is feasible, we suggest that the current Phase II MS4 Permits be continued administratively to allow for completion of the economic analysis and appropriate fine-tuning of the regulation.

TAC Review. Some members of the TACs and observing participants in that process have expressed an understanding that an additional review opportunity was to be provided to TAC members prior to presentation to the Board. They are concerned that this opportunity was not provided although new material has been added to the regulations since the last TAC meetings.

Some members of the HRPDC Regional Stormwater Management Committee have suggested that approval of these two regulations for public review should be delayed until

Mr. Joe Maroon, Director
September 19, 2007
Page 3

all concerns have been addressed. We recognize that unless an administrative continuance is implemented for the Phase II Regulations, further delay in the Phase II Regulations does not appear feasible. To address the concerns that have been expressed within the Hampton Roads region, we recommend that, in conjunction with moving forward with the public review and comment, the Department of Conservation and Recreation undertake the following:

1. Continue working with the stakeholders, and in particular, with the regulated MS4 localities, to develop guidance on implementation of the regulations and on transitioning from the current regulatory system to the new regulations.
2. Continue working with the stakeholders to develop appropriate training programs to support the transition from the current to the new regulatory system.
3. Continue working with the stakeholders to further refine the regulations to address continuing concerns.

The staff of the Hampton Roads Planning District Commission and the members of the HRPDC Regional Stormwater Management Committee believe that considerable progress has been made in developing a regulatory system to address the water quality and quantity issues associated with stormwater. We would be pleased to continue working with DCR staff to address the above-noted concerns and to continue improving the regulations to the benefit of the Commonwealth.

Thank you for the opportunity to address this important issue. We look forward to continuing our cooperative efforts to enhance and implement the Virginia Stormwater Management Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur L. Collins".

Arthur L. Collins
Executive Director/Secretary

JMC/mkf

cc: Mr. David Dowling, DCR
Regional Stormwater Management Committee